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Filing date: **10/14/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92047013
Party	Plaintiff NeTrack, Inc.
Correspondence Address	Carl Oppedahl Oppedahl Patent Law Firm LLC P.O. Box 4850 Frisco, CO 80443-4850 UNITED STATES docket-oppedahl@oppedahl.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	Terrence M. Wyles
Filer's e-mail	docket-oppedahl@oppedahl.com
Signature	/s/
Date	10/14/2008
Attachments	2008-10-14-DRAFT-NTer-i007-Notice-of-Reliance-on-Answers-to-Request-for-Admissions.pdf (6 pages)(32069 bytes) Exhibit-G-2008-10-10-75287548-TARR-Page.pdf (4 pages)(72791 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Registration No. 3,064,820

Mark: NETTRAK

Registered March 7, 2006

Netrack, Inc., Petitioner)	
)	
v.)	Cancellation No. 92047013
)	
Internet FX, Inc., Registrant)	

Commissioner for Trademarks

P.O. Box 1451

Alexandria, VA 22313-1451

NOTICE OF RELIANCE

Pursuant to TBMP § 704.02, the Petitioner hereby notifies the Board and the Registrant that, in support of the Petitioner's Cancellation Action, the Petitioner is relying on the following Registrant answers to the First Set of Request for Admissions (RFA) from the Petitioner, as well as each related and supporting Exhibit noted below. Accordingly, the Petitioner introduces said answers and Exhibits and respectfully requests that said answers and Exhibits be admitted into evidence:

RFA 1: Petitioner filed its trademark application for NETRACK on May 6, 1997.

Registrant Answer: Registrant admits that electronic records of the United States Patent and Trademark Office indicate that U.S. trademark application Serial No. 75/287,548 was filed on May 6, 1997.

Based on the Registrant's reference to said electronic record, the Petitioner introduces Exhibit G, which is a copy of the TARR Status page from the United States Patent and Trademark Office

for trademark application 75/287,548 for the mark NETRACK. This exhibit reflects a copy of an official record pursuant to 37 CFR § 2.122(e) and TMBP § 704.05.

RFA 2: Petitioner's trademark NETRACK was registered February 24, 1998.

Registrant Answer: Registrant admits that electronic records of the United States Patent and Trademark Office indicate that U.S. trademark application Serial No. 75/287,548 was registered on February 24, 1998.

Based on the Registrant's reference to said electronic record, the Petitioner once again relies on Exhibit G, which is a copy of the TARR Status page from the United States Patent and Trademark Office for trademark application 75/287,548 for the mark NETRACK. This exhibit reflects a copy of an official record pursuant to 37 CFR § 2.122(e) and TMBP § 704.05.

RFA 4: Petitioner's NETRACK trademark registration became incontestable no later than July 10, 2003.

Registrant Answer: Registrant admits that electronic records of the United States Patent and Trademark Office acknowledge a Section 15 Affidavit for U.S. trademark Registration No. 2,139,229 on July 10, 2003.

Based on the Registrant's reference to said electronic record, the Petitioner once again relies on Exhibit G, which is a copy of the TARR Status page from the United States Patent and Trademark Office for trademark application 75/287,548 for the mark NETRACK. This exhibit reflects a copy of an official record pursuant to 37 CFR § 2.122(e) and TMBP § 704.05.

RFA 5: Registrant's first use of its mark was at least as early as January 10, 2000.

Registrant Answer: Registrant admits that electronic records of the United States Patent and

Trademark Office show a first use date of January 10, 2000 for U.S. Registration No. 3,064,820.

RFA 6: Registrant's first use of its mark in commerce was at least as early as February 1, 2000.

Registrant Answer: Registrant admits that electronic records of the United States Patent and Trademark Office show a first use in commerce date of February 1, 2000 for U.S. Registration No. 3,064,820.

RFA 7: Registrant filed its trademark application no earlier than August 23, 2004.

Registrant Answer: Registrant admits that electronic records of the United States Patent and Trademark Office show a filing date of August 23, 2004 for U.S. trademark application Serial No. 76/608,800.

RFA 8: Registrant's Registration No. 3,064,820 was registered no earlier than March 7, 2006.

Registrant Answer: Registrant admits that Registrant's Registration No. 3,064,820 was registered no earlier than March 7, 2006.

RFA 9: Registrant's registered the domain name NETTRAKLM.COM no earlier than March 28, 2005.

Registrant Answer: Registrant admits that the online records of the Network Solutions WhoIs Database currently shows a website creation date of March 28, 2005 for the domain name NETTRAKLM.COM.

RFA 12: No application for [sic] trademark NETTRAK has been filed by Registrant with any state of the United States.

Registrant Answer: Registrant admits that no application for [sic] trademark NETTRAK has been filed by Registrant with any state of the United States.

RFA 13: Registrant uses its mark NETTRAK with a capital N and a capital T.

Registrant Answer: Registrant admits that the mark NETTRAK appears on the Registrant's website with a capital N and a capital T.

RFA 14: The mark NETTRAK is phonetically identical to the mark NETRACK.

Registrant Answer: Registrant denies that the mark NETTRAK is phonetically identical to the mark NETRACK.

RFA 15: The mark NETTRAK has the same number of syllables as the mark NETRACK.

Registrant Answer: Registrant admits that the mark NETTRAK has the same number of syllables as the mark NETRACK.

RFA 16: The mark NETTRAK and the mark NETRACK both start with the letter N and end with the letter K.

Registrant Answer: Registrant admits that the mark NETTRAK and the mark NETRACK both start with the letter N and end with the letter K.

RFA 17: In the mark NETTRAK and the mark NETRACK the letter E immediately follows the letter N.

Registrant Answer: Registrant admits that in the mark NETTRAK and the mark NETRACK the letter E immediately follows the letter N.

RFA 18: In the mark NETTRAK and the mark NETRACK the letter T immediately

follows the letter E.

Registrant Answer: Registrant admits that in the mark NETTRAK and the mark NETRACK the letter T immediately follows the letter E.

RFA 19: In the mark NETTRAK and the mark NETRACK the letter R follows the letter T.

Registrant Answer: Registrant denies that in the mark NETTRAK and the mark NETRACK the letter R follows the letter T.

RFA 20: In the mark NETTRAK and the mark NETRACK the letter A immediately follows the letter T.

Registrant Answer: Registrant admits that in the mark NETTRAK and the mark NETRACK the letter A immediately follows the letter T.

WHEREFORE, the Petitioner respectfully requests that the Registrant's admissions provided herein and Exhibit G be entered into evidence.

Respectfully submitted,

/s/
Terrence M. Wyles, Attorney
Colorado Reg. #39799

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing NOTICE OF RELIANCE on Registrant's admissions and associated Exhibit G was deposited on October 15, 2008 with the United States Post Office, First Class postage prepaid, and addressed to the Registrant's Correspondent as follows:

SUSAN E. HOLLANDER & BRITT L. ANDERSON
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PALO ALTO, CA 94304

/s/

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EXHIBIT G

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2008-10-10 11:03:27 ET

Serial Number: 75287548 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 2139229

Mark (words only): NETRACK

Standard Character claim: No

Current Status: This registration has been renewed.

Date of Status: 2008-03-01

Filing Date: 1997-05-06

Transformed into a National Application: No

Registration Date: 1998-02-24

Register: Principal

Law Office Assigned: LAW OFFICE 107

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 830 -Post Registration

Date In Location: 2008-03-01

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. NETRACK, INC.

Address:

NETRACK, INC.
3080 Valmont Ave., Ste. 200
Boulder, CO 80301
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Not Provided

GOODS AND/OR SERVICES

International Class: 038

Class Status: Active

telecommunications services, namely, providing access to a global computer network by server colocation, and providing computer leased line and frame relay connectivity for electronic transmission and reception of information

Basis: 1(a)

First Use Date: 1996-03-06

First Use in Commerce Date: 1996-04-29

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2008-03-01 - First renewal 10 year

2008-03-01 - Section 8 (10-year) accepted/ Section 9 granted

2008-02-28 - Assigned To Paralegal

2008-02-25 - TEAS Section 8 & 9 Received

2007-10-07 - Applicant/Correspondence Changes (Non-Responsive) Entered

2007-10-07 - TEAS Change Of Owner Address Received

2007-04-01 - Case File In TIGRS

2006-01-24 - TEAS Change Of Correspondence Received

2003-07-10 - Section 8 (6-year) accepted & Section 15 acknowledged

2003-04-19 - Section 8 (6-year) and Section 15 Filed

2003-04-21 - TEAS Section 8 & 15 Received

1998-02-24 - Registered - Principal Register

1997-12-02 - Published for opposition

1997-10-31 - Notice of publication

1997-10-02 - Approved for Pub - Principal Register (Initial exam)

1997-10-01 - Examiner's amendment mailed

1997-09-22 - Non-final action mailed

1997-09-19 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

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